

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8 and 515E.3A and chapter 515, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 21, "Requirements for Excess and Surplus Lines, Risk Retention Groups and Purchasing Groups," Iowa Administrative Code.

The rules in Chapter 21 provide duties and procedures for insurance producers and nonadmitted insurers in order to provide excess and surplus lines insurance in Iowa. The proposed amendments to the rules update and clarify the duties and procedures. The Insurance Division intends that insurance companies and producers will comply with the rules beginning April 29, 2009, for policies sold or issued in Iowa on or after January 1, 2009.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 17, 2009. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on February 17, 2009, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 515 and 515E.

The following amendments are proposed.

ITEM 1. Amend rule **191—21.1(515)**, definition of "Qualified surplus lines carrier," as follows:

"Qualified surplus lines carrier" means a nonadmitted insurer that the division has determined is qualified to provide surplus lines coverage as set forth in Iowa Code section ~~515.147~~ 515.120, but in no event shall "qualified surplus lines carrier" include an insurer described in Iowa Code section ~~515.148~~ 515.122.

ITEM 2. Amend rule 191—21.2(515) as follows:

191—21.2(515) Qualified surplus lines carriers' duties.

21.2(1) Insurer liable. Where, pursuant to Iowa Code section ~~515.147~~ 515.120, coverage is placed with a qualified surplus lines carrier, the qualified surplus lines carrier shall be liable for the premium tax required by Iowa Code section ~~515.147~~ 515.120.

21.2(2) How premium tax quoted. A qualified surplus lines carrier or a broker for a qualified surplus lines carrier is authorized to quote a premium which includes tax as is required by Iowa Code section ~~515.147~~ 515.120, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. ~~Policy~~ Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

ITEM 3. Amend rule 191—21.3(515) as follows:

191—21.3(515) Producers' duties.

21.3(1) No change.

21.3(2) ~~Quarterly reports required.~~ Electronic reporting of premium tax. A producer who places insurance with a qualified surplus lines carrier shall ~~file a report with the division. Reports shall be filed on April 10, July 10, October 10 and January 10, summarizing the surplus lines insurance issued during the prior calendar quarter. The reports shall be made using the division's Form SL 2007 and shall be filed electronically or as otherwise directed by the division. A producer is not required to file a report for a quarter in which no surplus lines insurance was issued. If a producer does not file a quarterly report by the due date, the producer shall be fined \$100 on the day after the report was due and an additional \$100 on the first of each month thereafter until the report is filed.~~ file electronically the premium tax information with the division on or before March 1 for policies issued during the preceding calendar year.

21.3(3) *Annual report.* On or before March 1 of each year, every producer who has placed insurance with qualified surplus lines carriers when the policies have been issued during the preceding calendar year shall file electronically with the division or as otherwise directed by the division a sworn report of all such business written during the preceding calendar year and shall submit the amount to cover the taxes due on said business. If no business was written during the preceding calendar year, no report is required. Failure to file an annual return or pay the taxes imposed by Iowa Code section ~~515.147~~ 515.120 et seq., will be deemed grounds for the revocation of a producer's license by the insurance division, and failure to file an annual return or pay taxes within the time requirements of this rule will subject the producer to the penalties of ~~2006 Iowa Acts, Senate File 2364, section 68 [Iowa Code section 515.147A]~~ 515.121.

ITEM 4. Amend rule 191—21.4(515) as follows:

191—21.4(515) Producers' duty to insured; evidence of coverage. A producer who places coverage with a qualified surplus lines carrier as defined herein shall deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code section ~~515.147~~ 515.120, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A producer may comply with this rule by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy.

ITEM 5. Amend subrules 21.5(1), 21.5(2) and 21.5(3) as follows:

21.5(1) *Application and procedures for initial qualification of a nonadmitted insurer as a qualified surplus lines carrier.*

a. Any insurer who wishes to qualify under Iowa Code section ~~515.147~~ 515.120 as a nonadmitted insurer shall make an application.

b. and c. No change.

21.5(2) *Procedures for renewal of a nonadmitted insurer as a qualified surplus lines carrier.*

~~a.~~ A nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that met the division's requirements for becoming a qualified surplus lines carrier shall, by March 1 of each year following the year of qualification:

~~(1)~~ a. Continue to comply with paragraph 21.5(1) "c";

~~(2)~~ b. Pay a \$100 renewal fee; and

~~(3)~~ c. Submit to the division the documents and materials listed on the division's Web site, www.iid.state.ia.us.

~~b.~~ In addition, a nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 shall file quarterly financial statements as required by the division.

21.5(3) *Failure to comply.* Failure of a nonadmitted insurer to timely submit the materials required in this rule or to otherwise fail to comply with this rule shall result in the termination of the nonadmitted insurer's status as a qualified surplus lines carrier.

ITEM 6. Amend rule 191—21.6(515E) as follows:

191—21.6(515E) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, they shall follow the procedure set forth in subrule 21.3(2). In the event that the group desires to pay the premium tax directly, ~~it the group~~ shall file electronically with the division, ~~electronically or as directed by the division, a sworn statement on Form No. SL264 and other information required~~ through the division's Web site, www.iid.state.ia.us.

ITEM 7. Amend rule 191—21.9(515,515E) as follows:

191—21.9(515,515E) Failure to comply; penalties. Failure of a producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code section ~~515.147, 515.148, or 515.149~~ 515.120, 515.121, or 515.122, or chapter 515E may subject the producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapter 507B or ~~2006 Iowa Acts, Senate File 2364, section 68~~ [Iowa Code section ~~515.147A~~] 515.121.

ITEM 8. Amend **191—Chapter 21**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~515.147 to 515.149~~ 515.120 to 515.122.